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No. 503

In the Supreme Court of the United States

OCTOBER TERM, 1964

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

ESTATE OF MARSHAL L. NOEL, DECEASED, WILLIAM H. FRANTZ AND RUTH M. NOEL, EXECUTORS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE PETITIONER

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OPINIONS BELOW

The findings of fact and opinion of the Tax Court (R. 38–47) are reported at 39 T.C. 466. The opinion of the Court of Appeals (R. 48–54) is reported at 332 F. 2d 950.

JURISDICTION

The judgment of the Court of Appeals was entered on June 17, 1964. (R. 54–55.) The petition for certiorari was filed on September 15, 1964, and was granted on December 7, 1964. (R. 55.) The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether payments made to the beneficiary of two flight accident insurance policies on account of the death of the insured were received "as insurance under policies on the life of the decedent" within the meaning of Section 2042 of the Internal Revenue Code of 1954 and hence were required to be included in the decedent's gross estate for estate tax purposes.

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of the Internal Revenue Code of 1954 and of the Treasury Regulations issued thereunder are set forth in the Appendix, *infra*, pp. 16–17.

STATEMENT

On the evening of June 19, 1956, decedent's wife, Ruth M. Noel (hereinafter sometimes referred to as Ruth), drove her husband by automobile from their home to New York International Airport where he was to board an airplane bound for Venezuela. Just prior to taking off, decedent applied for two flight insurance policies, each in the principal sum of $62,500, and each naming him as the person insured, at a booth maintained for the sale of such policies by Airport Sales Corporation, a sales agent. Decedent made separate written applications for each policy: one, for a policy in which Continental Casualty Company was the insurer; the other, for a policy in which The Fidelity & Casualty Company of New York was the insurer. (R. 39.) Both applications named Ruth as the beneficiary, and stated that the trip to be covered by the insurance was a round-

trip flight from New York, New York, to Puerto Ordaz, Venezuela. The premium paid for each policy was $2.50. After the applications were signed by the decedent, he gave them to the sales clerk who validated them. Upon the decedent's instructions, the clerk then handed the policies to Ruth who kept them in her custody until after her husband's death. (R. 40.)

Each policy provided for payments by the insurer in specified amounts if certain bodily injuries were sustained by the insured as a result of an accident while a passenger on the round-trip flight, and each policy also provided for payment of the principal sum ($62,500) in the event of loss of life in such an accident. In addition, each policy reserved to the insured the right to assign the policy and to change the beneficiary without the consent of the beneficiary originally designated. (R. 40–41.)

Less than three hours later, at 12:31 a.m., E.S.T., on June 20, 1956, the airplane on which decedent was a passenger crashed into the Atlantic Ocean and all aboard were killed. On June 25, 1956, decedent's wife filed a claim for the amounts due under the two policies and in due course received the principal sums totaling $125,000. (R. 42.) This amount was not included in decedent's gross estate in the estate tax return filed by the executors of his will. The Commissioner of Internal Revenue determined that the proceeds of the policies should be included, and the Tax Court sustained that determination. (R. 38–47.) The Court of Appeals reversed. (R. 48–54.)

ARGUMENT

THE PAYMENTS MADE TO THE BENEFICIARY OF TWO FLIGHT ACCIDENT INSURANCE POLICIES ON ACCOUNT OF THE DEATH OF THE INSURED WERE RECEIVED "AS INSURANCE UNDER POLICIES ON THE LIFE OF THE DECEDENT" WITHIN THE MEANING OF SECTION 2042 OF THE INTERNAL REVENUE CODE OF 1954

INTRODUCTION

Section 2042 of the Code includes in the estate of a decedent amounts receivable "as insurance under policies on the life of the decedent." Similar provisions have been in the revenue laws since 1918. In 1929, the Board of Tax Appeals held in *Ackerman* v. *Commissioner,* 15 B.T.A. 635, that proceeds of accident policies and double indemnity life insurance policies were amounts received "as insurance under policies taken out by decedent upon his own life," and were thus includible in decedent's taxable estate under the Revenue Act of 1924. The *Ackerman* decision has been cited with approval by this Court, has been universally considered sound by commentators, has been the basis of a consistent administrative interpretation of the statute for thirty-five years, and has never been questioned by Congress in the several reenactments of the provision involved. If there is to be a change in the law at this late date it should come from legislative action rather than *de novo* judicial re-examination of the question.

Overturning this long-standing interpretation, the Court of Appeals held that flight accident insurance was not life insurance because under life insurance the insurer "agrees to pay a specified sum upon the occurrence of an inevitable event," whereas accident in-

surance covers a risk "which is evitable and not likely to occur." (R. 51.) The language of Section 2042, its legislative history, and, most important, its place in the overall plan of the federal estate tax all confirm the correctness of the *Ackerman* decision. Acceptance for estate tax purposes of the Court of Appeals' distinction between insurance against avoidable and inevitable events would, moreover, result in the exclusion from the estate tax of such widely used instruments of estate planning as double indemnity and term insurance and would defeat the manifest intention of Congress to tax all wealth the disposition of which is controlled by the decedent at his death.

A. THE *ACKERMAN* DECISION, HOLDING THAT THE PROCEEDS OF AN ACCIDENT INSURANCE POLICY PAYABLE BECAUSE OF THE DEATH OF A DECEDENT ARE INCLUDIBLE IN HIS GROSS ESTATE, HAS BECOME AN ESTABLISHED PART OF THE LAW OF FEDERAL ESTATE TAXATION

Section 2042(2) of the Internal Revenue Code of 1954, App. *infra*, p. 16, provides that the proceeds of "insurance under policies on the life of the decedent" are includible in the decedent's gross estate if he "possessed at his death any of the incidents of ownership." This provision reflects the present formulation of a congressional policy with respect to insurance that was first introduced into the revenue laws by Section 402(f) of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1097–1098. The scope of the section's coverage was settled by the Board of Tax Appeals in 1929 in *Ackerman* v. *Commissioner*, 15 B.T.A. 635, which held that proceeds of accident policies and double indemnity life insurance policies paid by reason of accidental death were paid pursuant to "insurance under policies taken

out by the decedent upon his own life", within the meaning of Section 302(g) of the Revenue Act of 1924, c. 234, 43 Stat. 253, 304–305. The conclusion of the Board of Tax Appeals that the statute covered all insurance risks as to which payment is "contingent upon the loss of life" (15 B.T.A. 635, 637) has been accepted as correct and has not been challenged for thirty-five years.

The decision in *Ackerman* in 1929 has been the basis of a consistent and long standing Treasury interpretation of the statute and of the Treasury Regulations on Estate Tax, Section 20.2042–1(a) of which now provides that the "term 'insurance' refers to life insurance of every description."[1] Since 1929 this Court has cited the *Ackerman* decision with approval in *Helvering* v. *Le Gierse,* 312 U.S. 531, 539, and it has been accepted unqualifiedly by such recognized authorities on estate taxation as Lowndes and Kramer, *Federal Estate and Gift Taxes* (1962 ed.), pp. 290–291; 1 Paul, *Federal Estate and Gift Taxation* (1942), pp. 507–508; 2 Mertens, *Law of Federal Gift and Estate Taxation* (1959 ed.), p. 340; 4 Rabkin & Johnson, *Federal Income Gift and Estate Taxation* (1964 ed.), pp. 6167–6168; and Clark, *Taxation of Life Insurance and Annuities* (1941 ed.), p. 82. The construction announced in *Ackerman* has been widely publicized in the textual comments of the leading tax reference

[1] See also Treasury Regulations 105 (1939 Code), Sec. 81.25; Treasury Regulations 80 (1934 ed. and 1937 ed.), Art. 25; Treasury Regulations 70 (1926 ed. and 1929 ed.), Art. 25; Treasury Regulations 68 (1924 ed.), Art. 25; Treasury Regulations 63 (1922 ed.), Art 27; and Treasury Regulations 37 (1921 ed.), Art. 32.

section has been reenacted, and amended in other re-

works. Prentice-Hall *Federal Taxes, Estate and Gift Taxes*, par. 120,427.2, and 1 Commerce Clearing House, *Federal Estate and Gift Tax Reporter*, par. 1650.05. Finally, Congress has never attempted to limit the scope of the *Ackerman* decision or the established administrative interpretation of the statute, although the spects, on a number of occasions.[2] Such long standing interpretations continued without change and applying to substantially reenacted statutes are generally deemed to have received congressional approval and have the effect of law. Cf. *Helvering* v. *Winmill*, 305 U.S. 79, 83; *United States* v. *Dakota-Montana Oil Co.*, 288 U.S. 459, 466, and *Boehm* v. *Commissioner*, 326 U.S. 287, 291–292. In short, the *Ackerman* decision has become an established part of the fabric of the law of federal estate taxation.

B. THE HISTORY OF SECTION 2042 AND ITS ROLE IN THE OVERALL PLAN OF ESTATE TAXATION SHOW THAT IT IS INTENDED TO BRING INTO THE GROSS ESTATE ALL PROCEEDS OF ANY FORM OF INSURANCE OWNED OR CONTROLLED BY THE INSURED AND PAYABLE BY REASON OF HIS DEATH

Section 2042 of the Internal Revenue Code of 1954 is one of a number of provisions defining the gross estate of a decedent in such a way as to make taxable the full value of any property controlled by a decedent and received by reason of his death. The provisions, found in Sections 2033 to 2042 of the Code, are intentionally all-encompassing, reaching every disposition

[2] Section 2042 was first enacted as Section 402(f) of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1097–1098. This section was reenacted in Section 402(f) of the Revenue Act of 1921, c. 136, 42 Stat. 227, 278–279; in Section 302(g) of the Revenue Act of 1924, c. 234, 43 Stat. 253, 304, 305, and the Revenue Act of 1926, c. 27, 44 Stat. 9, 70–71; and in Section 811(g) of the Internal Revenue Code of 1939.

which, as a matter of economic reality, is testamentary and was subject to the decedent's control. The statute reaches not only property owned by the decedent at death but also, in certain circumstances, property which was disposed of by the decedent prior to his death (26 U.S.C. 2035–2040) and property which the decedent never owned outright but which was completely subject to his disposition at death (26 U.S.C. 2041). Like other property subject to the decedent's control at death, the proceeds of "insurance under policies on the life of the decedent" are included in the gross estate if the decedent retains the right to control their disposition through his possession of any "incidents of ownership" of the policies (26 U.S.C. 2042).

Section 2042 of the Code performs an integral role in accomplishing the congressional purpose of taxing the full value of property received by reason of the death of a decedent who had the power to control the disposition of the property at the time of his death. It was added, along with the predecessor of Section 2041, by the Revenue Act of 1918. With respect to the inclusion in the gross estate of property over which the decedent had a general power of appointment, the House Committee Report stated (H. Rep. No. 767, 65th Cong., 2d Sess., pp. 21–22 (1939–1 Cum. Bull. (Part 2), 86, 101)): "The possessor of the power has full authority to dispose of the property at his death, and there seems to be no reason why the privilege which he exercises should not be taxed in the same degree as other property over which he exercises the same authority." The same considerations applied to life insurance owned by the decedent. The Commit-

tee Report indicated concern over the fact that insurance proceeds payable to specific beneficiaries were outside of the decedent's taxable estate even though such proceeds represented the transfer of wealth controlled by the decedent during his life and which was received by others as a result of his death. Accordingly, Section 402(f) was added to the Internal Revenue Code to include in the gross estate the proceeds of "insurance under policies taken out by the decedent upon his own life."

The taxation of death benefits under insurance contracts remained unchanged until the Revenue Act of 1942, Section 404, 56 Stat. 798, amending Section 811 (g) of the Internal Revenue Code of 1939. In that act, the definition of the gross estate was changed to substantially its present form, which includes the proceeds of insurance to the extent that the decedent possessed any of the incidents of ownership of the policy at the time of his death.[3] In the Internal Revenue Code of 1954, to place insurance in an "analogous position to other property," Congress specified that a reversionary interest in the decedent was an incident of ownership if it was worth in excess of five per cent of the value of the policy at the time of decedent's death.

Both the history of the section and its present function in the estate tax show that Section 2042 was intended to make taxable the transfer of wealth by

[3] The 1942 Act also added a "premium payment" test of includibility which was later eliminated by Section 2042 of the Internal Revenue Code of 1954. See H. Rep. No. 1337, 83d Cong., 2d Sess., p. 91.

means of any and all forms of insurance "policies on the life of the decedent" which the decedent owned or controlled at the time of his death just as the preceding provisions of the statute make taxable the transfer of wealth under any and all other forms of disposition of property owned or controlled by the decedent. It is, moreover, plain in this case that the decedent retained sufficient "incidents of ownership", within the meaning of that phrase in Section 2042, to require inclusion of the proceeds in the decedent's gross estate if they were paid pursuant to "insurance under policies on the life of the decedent." (R. 43–47, 49.) Decedent had the right to receive substantial payments in the event of bodily injury resulting from an airplane accident. Each policy also reserved to the decedent the right to change the beneficiary, an incident of ownership sufficient in itself to bring the policy proceeds into the decedent's gross estate. See, *e.g., Chase Nat. Bank* v. *United States,* 278 U.S. 327; *Fried* v. *Granger,* 105 F. Supp. 564, 567 (W.D. Pa.), affirmed on the opinion of the District Court, 202 F. 2d 150 (C.A. 3); *Singer* v. *Shaughnessy,* 198 F. 2d 178, 181 (C.A. 2); Treasury Regulations on Estate Tax (1954 Code), Section 20.2042–1(c)(1); S. Rep. No. 1631, 77th Cong., 2d Sess., p. 235 (1942–2 Cum. Bull. 504, 677); H. Rep. No. 2333, 77th Cong., 2d Sess., p. 163 (1942–2 Cum. Bull. 372, 491–492). Thus the sole question in the present case, as in *Ackerman,* is whether the statute's purposes and language dictate or admit of an exception excluding from the gross estate the proceeds of policies on the life of the decedent which are payable only in the event of

death by certain specified causes (*e.g.*, any accident, or airplane accident, or particular diseases) or in the event of death within a certain limited period of time (*i.e.*, term insurance).

As the Board of Tax Appeals noted in the *Ackerman* case (15 B.T.A. 635, 638), Congress has chosen the broadest possible language in defining the coverage of insurance proceeds in the estate tax; the gross estate now includes "the value of all property * * * [t]o the extent of the amount receivable by [any] beneficiaries as insurance under policies on the life of the decedent" (Section 2042). The language itself admits of no distinction between "policies on the life of the decedent" which are payable in all events and those payable only if death is caused by certain enumerated events.

A contrary interpretation, moreover, would not only be inconsistent with the established interpretation of the narrower language of related income tax provisions but would, by overturning that interpretation, produce anomalous and undesirable tax consequences. Section 101 of the Internal Revenue Code of 1954 excludes from gross income death benefits paid "under a life insurance contract." Section 1.101-1(a) of the Treasury Regulations on Income Tax specifically provides that "Death benefit payments having the characteristics of life insurance proceeds payable by reason of death under contracts, such as * * * accident and health insurance contracts, are covered by this provision." *Infra*, p. 17. *A fortiori* the same should be true of the broader language of Section 2042. Indeed, if, as the Court of Appeals has held, the phrase "insurance under policies on the life of the

decedent" is not broad enough to encompass death benefits paid under accident policies, it would seem to follow that such benefits would also be outside the more restricted definition of "life insurance" in Section 101, and the exclusion granted the decedent's estate would be at the expense of the beneficiary who would then be subject to an income tax liability on the policy proceeds.

While it may be reasonable to treat life insurance differently from health-and-accident insurance for purposes of dealing with the company engaging in the business (and this is done by State regulatory agencies and the federal income tax), there is no justification for making the estate tax treatment of the death benefits received by a beneficiary from policies owned by the decedent depend upon the nature of the insurer's business or whether the policies insured against all causes of death or only some causes. It is, of course, true that ordinary life insurance—unlike insurance against only certain causes of death—has a significant "savings" aspect, so that frequently the proceeds of ordinary life insurance represent, in large part, property accumulated by the insured during his lifetime. By the same token, the possibilities of tax avoidance through investing accumulated property in ordinary life insurance are far greater. But neither of these differences of degree bears upon the fundamental policy of the estate tax: to tax the full value of any property received by reason of the death of a decedent who enjoyed the right to control its disposition at death.

This basic policy is particularly evident in Section 2042, for the tax is on the proceeds of insurance, not on the premiums paid for it or its cash surrender value. The proceeds of a policy payable only in the event of accidental death are as fully received from a decedent who controlled their disposition as are the proceeds of any other policy "on the life of the decedent." Moreover, every form of insurance on the life of the decedent involves the possibility that for a small expenditure the decedent may transfer substantial amounts of wealth and thereby greatly increase the gross estate which is measured by the proceeds of insurance, not by the decedent's contribution. But it has never been supposed that the proceeds of an ordinary life insurance policy would be excluded from the estate of a decedent who lost his life after making only one premium payment.

To be sure, the disparity between the decedent's contribution and the policy proceeds is likely to be greater where the policy insures against death from only a limited number of causes or for only a limited time. If the different policies were arrayed according to the risks assumed by the insurer, ordinary life insurance, with or without double-indemnity provisions, might appear at the opposite end of the spectrum from specific trip-flight accident policies. Term insurance with renewable features, ordinary term insurance, and general accident policies with death benefit provisions are examples that would fall somewhere in between. But the difference in the degree of risk, and thus of the disparity between premiums paid and benefits realized, is irrelevant to the purpose of the statute to tax the

value of any property subject to the decedent's control which is received by reason of his death. And it is indisputably clear that the language chosen by Congress neither suggests any intention of distinguishing among these forms of insurance nor furnishes any guidelines to the courts in drawing the lines that would be required if the statute covered the proceeds of some but not all "policies on the life of the decedent."

Finally, adoption of a distinction, such as that created by the court below, between "policies on the life of the decedent" which are inevitably payable and those which are not would exclude from the gross estate not only the proceeds of general accident policies and part of the proceeds of double-indemnity life insurance policies paid by reason of death (which were expressly discussed by the court), but also such conceded forms of life insurance as term insurance payable only in the event that the insured dies within a specified period of time. We submit that Congress plainly had no such intent. Insurance policies whose proceeds are payable by reason of the death of the insured are essentially testamentary in character, and regardless of whether the risk assumed by the insurer is an unlikely or "inevitable" one, the maturation of the beneficiary's right to the proceeds attributable to the death of the insured is an appropriate occasion for the exaction of an estate tax. *United States* v. *Manufacturers Nat. Bank*, 363 U.S. 194; *Chase Nat. Bank* v. *United States*, 278 U.S. 327.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be reversed.

Respectfully submitted.

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APPENDIX

STATUTES AND REGULATIONS INVOLVED

1. ESTATE TAX

Internal Revenue Code of 1954 (26 U.S.C., 1958 ed.):

> SEC. 2042. PROCEEDS OF LIFE INSURANCE.
>
> The value of the gross estate shall include the value of all property—
>
> (1) *Receivable by the executor.*—To the extent of the amount receivable by the executor as insurance under policies on the life of the decedent.
>
> (2) *Receivable by other beneficiaries.*—To the extent of the amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. * * *

Treasury Regulations on Estate Tax (1954 Code):

> SEC. 20.2042–1. Proceeds of life insurance—(a) *In general.* (1) Section 2042 provides for the inclusion in a decedent's gross estate of the proceeds of insurance on the decedent's life (i) receivable by or for the benefit of the estate (see paragraph (b) of this section), and (ii) receivable by other beneficiaries (see paragraph (c) of this section). The term "insurance" refers to life insurance of every description, including death benefits paid by fraternal beneficial societies operating under the lodge system.
>
> * * * * * *

2. INCOME TAX

Internal Revenue Code of 1954 (26 U.S.C., 1958 ed.):

SEC. 101. CERTAIN DEATH BENEFITS.

(a) *Proceeds of Life Insurance Contracts Payable by Reason of Death.*—

(1) *General Rule.*—Except as otherwise provided in paragraph (2) and in subsection (d), gross income does not include amounts received (whether in a single sum or otherwise) under a life insurance contract, if such amounts are paid by reason of the death of the insured.

* * * * *

Treasury Regulations on Income Tax (1954 Code):

SEC. 1.101–1 *Exclusion From Gross Income of Proceeds of Life Insurance Contracts Payable by Reason of Death.*

(a) *In General.* * * * Death benefit payments having the characteristics of life insurance proceeds payable by reason of death under contarcts, such as workmen's compensation insurance contracts, endowment contracts, or accident and health insurance contracts, are covered by this provision. * * *

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